



Public Notice

Public Notice No.
200301428

Date:
1 Jun 04

Closing Date:
22 Jun 04

**US Army Corps
of Engineers**
Louisville District

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Mr. Darwin Messer, CELRL-OP-FS
Eastern Kentucky Regulatory Office
845 Sassafras Creek Road
Sassafras, Kentucky 41759

Phone: (606) 642-3208

This notice announces an application submitted for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act (CWA)

APPLICANT: Miller Brothers Coal, Inc.
25 Clydean Drive
Leburn, Kentucky 41831

AGENT: Walturn Engineering, Inc.
P.O. Box 130
4142 Ky Rt 550
Hueysville, Kentucky 41640

LOCATION: This project is located on Calhoun Branch of Quicksand Creek and Steer Fork of the South Fork of Quicksand Creek approximately 1 mile south of State Route 30 near Rousseau in Breathitt County, Kentucky.

Latitude: 37° 35' 07"
Longitude: 83° 13' 23"
7.5 Minute Quadrangle: Guage, KY

PURPOSE: The proposed project is a surface coal mining operation. Its purpose is to extract marketable bituminous coal.

DESCRIPTION OF WORK: The proposed mining activity would be conducted using contour, area and auger/highwall methods to extract the Skyline and Haddix coal seams over an 863-acre area. The applicant proposes to construct 6 permanent spoil disposal fills and 4 temporary sediment control ponds. In sum, the fills would impact 4,146 feet of intermittent stream reaches and 6,472 feet of ephemeral stream reaches, the largest of which drains a watershed of 175 acres. The four sediment ponds would temporarily impact 2,444 of additional intermittent stream reaches. Also, 5,484 feet of intermittent stream reaches would be temporarily impacted by sediment transport as the "drainage corridors" between the hollow fill areas and the sediment ponds. The applicant has received authorization for this operation from the Kentucky Department for Surface Mining and Reclamation Enforcement (KDSMRE) as #813-0263 Amendment No. 1.

MITIGATION: The applicant has proposed to offset the permanent loss of ephemeral stream reaches by the construction of naturally designed stream channels on the slopes of the hollow fills. Temporary impacts of the sediment ponds and drainage corridors would also be offset on-site through restoration and/or enhancement following KDSMRE Phase III bond release. The material deposited to construct the dams of the temporary sediment ponds would be removed during the reclamation phase of the mining operation and the stream channels restored. The applicant has submitted pre-mining descriptions of stream morphology (i.e., pattern, profile, dimension and substrate) to serve as the target for post-mining stream restoration. Permanent intermittent stream losses, along with any net functional, temporal and/or cumulative losses on-site are proposed to be offset through the enhancement of reaches of Deep Ford Branch of Big Caney Creek, a tributary of Quicksand Creek. A Best Management Practices (BMP) plan has been proposed which would minimize overall stream loss and minimize stream degradation through environmentally sensitive mine plan design and operation.

It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps will make a determination of appropriate mitigation, upon review of all submitted information.

REVIEW PROCEDURES: A DA Permit cannot be issued if any legally required Federal, State, or local authorization or certification is denied. A DA Permit, if otherwise warranted, will not be issued until a State of Kentucky Water Quality Certification or waiver is on file at this office. In order to comply with Section 401 of the Clean Water Act, the applicant, by this notice, hereby applies for State certification from the Kentucky Natural Resources and Environmental Protection Cabinet Division of Water (KDOW).

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Based on available information, the proposed activity will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest that might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, pre-historical, or historical sites or structures which might be affected by

the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections that are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest.

Information pertaining to this application is available for public examination during normal business hours upon prior request. All comments regarding this proposal should be addressed to Mr. Darwin Messer, CEORL-OP-FS at the address noted above and should refer to the Public Notice Number 200301428.